

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Mark David Butcher,
Plaintiff,
v.
Social Security Administration,
Defendant.

CV-11-0619-TUC-FRZ (JR)

**REPORT AND
RECOMMENDATION**

The record reflects that Plaintiff has not served upon Defendant the Complaint (Doc. 1) Summons, and Scheduling Order (Doc. 3) and has not filed an opening brief. The Scheduling Order provides that the failure to timely file an opening brief "may subject this case to dismissal as prescribed in LRCiv 41.1."

Additionally, Rule 4(m) of the Federal Rules of Civil Procedure provides that "[i]f service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant . . ." In excess of 120 days having passed since this action was filed, and service having not apparently been completed, this action is subject to dismissal.

By Order filed March 12, 2013, the Court ordered that Plaintiff, by April 16, 2013, provide the Court with an affidavit showing good cause why this case should not be dismissed pursuant to LRCiv. 41.1 and Rule 4(m) fo the Federal Rules of Civil Procedure. As of the date of this order, the docket reflects that the Plaintiff has failed to file the required affidavit.

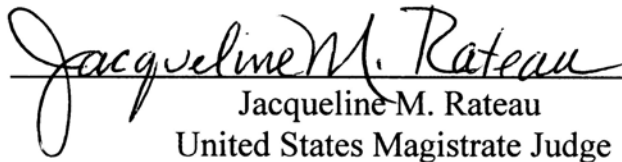
Accordingly,

1 The Magistrate Judge recommends that the District Court, after its independent
2 review of the record, enter an Order **dismissing** this case due to Plaintiff's failure to
3 prosecute.

4 This Recommendation is not an order that is immediately appealable to the Ninth
5 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules
6 of Appellate Procedure, should not be filed until entry of the District Court's judgment.

7 However, the parties shall have ten (10) days from the date of service of a copy of
8 this recommendation within which to file specific written objections with the District
9 Court. *See* 28 U.S.C. § 636(b)(1) and Rules 72(b), 6(a) and 6(e) of the Federal Rules of
10 Civil Procedure. Thereafter, the parties have ten (10) days within which to file a response
11 to the objections. If any objections are filed, this action should be designated case number:
12 **CV 11-0619-TUC-FRZ**. Failure to timely file objections to any factual or legal
13 determination of the Magistrate Judge may be considered a waiver of a party's right to *de*
14 *novo* consideration of the issues. *See United States v. Reyna-Tapia* 328 F.3d 1114, 1121
15 (9th Cir. 2003) (*en banc*).

16 DATED this 19th day of April, 2013.

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20 Jacqueline M. Rateau
21 United States Magistrate Judge
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